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9 Attorney for Defendant, City of Toppenish

10
11 **UNITED STATES DISTRICT COURT**
12 **FOR THE**
13 **EASTERN DISTRICT OF WASHINGTON**
14

15 CONFEDERATED TRIBES
16 AND BANDS OF THE
17 YAKAMA NATION, a
18 sovereign federally recognized
19 Indian Tribe,

20 Plaintiff,

21 v.

22 CITY OF TOPPENISH, a municipal
23 Corporation of the State of
24 Washington,

25 Defendant.
26
27

No. 1:24-CV-3189-MKD

**SUPPLEMENTAL RESPONSE
OF THE DEFENDANT, CITY
OF TOPPENISH TO THE
YAKAMA NATION'S
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

28 The Defendant, City of Toppenish, respectfully submits the following as its
29 Supplemental Response of the Defendant, City of Toppenish, to the Yakama
30 Nation's Complaint for Declaratory and Injunctive Relief.

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**SUPPLEMENTAL RESPONSE OF THE
DEFENDANT, CITY OF TOPPENISH,
TO THE YAKAMA NATION'S
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF - Page 1**

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1 The Plaintiff, relying on *Montana v. United States*, 450 U.S. 544, 565-566,
2 (1981), asserts that it has *civil authority* within the Yakama Reservation . . . over
3 the conduct of non-members . . . on non-Indian owned fee lands that threatens or
4 has some direct effect on the political integrity, the economic security, or the health
5 or welfare of the tribe. See Yakama Nation's Complaint for Declaratory and
6 Injunctive Relief, Page 4.
7

8
9 In *Montana v. United States, Id.*, the Supreme Court outlined two exceptions
10 to the general rule prohibiting the tribal exercise of jurisdiction over non-members,
11 described as follows:
12

13 1) "A tribe may regulate, through taxation, licensing, or
14 other means, the activities of nonmembers who enter consensual
15 relationships with the tribe or its members, through commercial
16 dealing, contracts, leases, or other arrangements[.]" and

17 2) "A tribe may also retain inherent power to exercise *civil*
18 *authority* over the conduct of non-Indians on fee lands within its
19 reservation when that conduct threatens or has some direct effect on
20 the political integrity, the economic security, or the health or welfare
21 of the tribe." (Emphasis added.)

22 *Id.* at 565-66

23 These exceptions are "limited ones" and are not to be construed in a manner
24 that "swallows the rule." *Plains Commerce Bank v. Long Family Land & Cattle*

25 SUPPLEMENTAL RESPONSE OF THE
26 DEFENDANT, CITY OF TOPPENISH,
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COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF - Page 2

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Co., 554 U.S. 316, 330 (2008) (*quoting Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 647 (2001)).

In this case, the Plaintiff seeks to take action related to a criminal matter, not a civil one. To support the proposition that this matter is criminal in nature, the penalties for violations of the International Building Code [including the International Fire Code¹] – the provisions of Chapter 15.01 of the Toppenish Municipal code (TMC) [Chapter 15.01 – Building Codes] provides as follows:

15.01.060 Unlawful acts and violations – Penalties.

A. It is unlawful for any person, entity, firm or corporation to erect, construct, alter, repair, move, remove, convert, demolish, equip, use, occupy or maintain any building, structure or other construction or cause to permit the same to be done, in violation of this chapter.

B. Any person, entity, firm or corporation who violates any provisions of this chapter or who erects, constructs, alters, repairs, moves, removes, converts, demolishes, equips, uses, occupies or maintains any building or structure that is in violation of approved construction documents, directives of the building and/or code officials, or a permit or certificate issued under the codes adopted pursuant to this chapter shall be subject to the penalties set forth in *Chapter 1.24 TMC* or as otherwise provided in law. (Ord. 2020-10 § , 2020). (Emphasis added.)

¹ TMC 15.01.010 Adoption of referenced codes. . . .

4. The 2018 International Fire Code (IFC), published by the International Code Council, Inc. . . .

1 With that, the provisions of Chapter 1.24 TMC – General Penalties – states
 2 as follows:

3
 4 Chapter 1.24
 5 GENERAL PENALTY*

6 Sections:

7 1.24.010 General penalty.

8 *For statutory provisions authorizing third class cities to
 9 provide penalties for the violation of ordinances by a fine not
 10 exceeding \$500.00 or imprisonment for a term not exceeding six
 11 months, or both, see RCW 35.24.290(12).

12 1.24.010 General penalty.

13 Any person violating any of the provisions of or failing to
 14 comply with any of the mandatory requirements of any ordinance of
 15 the city shall be *guilty of a misdemeanor*. Except in cases where a
 16 different punishment is prescribed by any ordinance of the city, any
 17 person convicted of a *misdemeanor* shall be punished by a fine not
 18 exceeding \$5,000 or by imprisonment for not more than one year, or
 19 by both such fine and imprisonment, but the punishment provided for
 20 violation of any criminal ordinance shall be the same as the
 21 punishment provided in state law for the same crime. The provisions
 22 of this section shall take priority over any ordinance not consistent
 23 herewith, and those portions of all ordinances in conflict herewith are
 24 repealed.

25 Each such person is *guilty* of a separate offense for each and
 26 every day during any portion of which any violation of any provisions
 27 of the ordinances of the city is committed, continued or permitted by
 any such person, and shall be punished accordingly. (Ord. 94-10 § 1,
 1994). (Emphasis added.)

28 Additionally, the Building Codes spell out, per sections 105.1.1 and 110.2 of
 29 the IFC, that the property owner and the owner's agent/representative shall be

1 responsible for compliance with and liable for violations of the IFC provisions.
2 Moreover, consistent with the above TMC penalty language, Section 110.4 IFC,
3 further includes IFC criminal penalties violations of fines and jail time.
4

5 In light of the limitations of the *Montana* exceptions, and the constraints on
6 expanding its parameters, the criminal nature of the underlying regulations in this
7 case preclude their application to the present situation. Accordingly, the injunctive
8 relief requested by the Plaintiff should not be granted, and the temporary injunction
9 should be withdrawn.
10

11 Respectfully submitted this 2nd day of January, 2025.

12 
13

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25 SUPPLEMENTAL RESPONSE OF THE
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of January, 2025, I electronically served the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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SUPPLEMENTAL RESPONSE OF THE
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